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HOUSE BILL 2563 By  
Jackson

SENATE BILL 2718  
By Haynes

AN ACT to amend Tennessee Code Annotated, Title 33, Chapter 6, relative to committal of mentally ill persons.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 33, Chapter 6, is amended by adding the following as a new part:

33-6-401. The legislature finds that an extremely dangerous group of sexually violent predators exists who do not have a mental disease or defect that renders them appropriate for involuntary treatment pursuant to the treatment act for mentally ill persons defined in Tennessee Code Annotated, Title 33, Chapter 6, which is intended to provide short-term treatment to individuals with serious mental disorders and then return them to the community. In contrast to persons appropriate for civil commitment under Tennessee Code Annotated, Section Title 33, Chapter 6, sexually violent predators generally have antisocial personality features which are unamenable to existing mental illness treatment modalities, and those features render them likely to engage in sexually violent behavior. The legislature further finds that sexually violent predators' likelihood of engaging in repeat acts of predatory sexual violence is high. The existing involuntary commitment procedure pursuant to the treatment act for mentally ill persons defined in Tennessee Code Annotated, Title 33, Chapter 6, is inadequate to address the risk these sexually violent predators pose to society. The legislature further finds that the

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prognosis for rehabilitating sexually violent predators in a prison setting is poor, the treatment needs of this population are very long-term, and the treatment modalities for this population are very different than the traditional treatment modalities for people appropriate for commitment under the treatment act for mentally ill persons defined in Tennessee Code Annotated, Title 33, Chapter 6. Therefore, a civil commitment procedure for the long-term care and treatment of the sexually violent predator is found to be necessary by the legislature.

33-6-402.

(a) "Sexually violent predator" means any person who has been convicted of or charged with a sexually violent offense and who suffers from a mental abnormality or personality disorder which makes the person likely to engage in the predatory acts of sexual violence, if not confined in a secure facility.

(b) "Mental abnormality" means a congenital or acquired condition affecting the emotional or volitional capacity which predisposes the person to commit sexually violent offenses in a degree constituting such person a menace to the health and safety of others.

(c) "Predatory" means acts directed towards strangers or individuals with whom relationships have been established or promoted for the primary purpose of victimization.

(d) "Sexually motivated" means that one of the purposes for which the defendant committed the crime was for the purposes of the defendant's sexual gratification.

(e) "Sexually violent offense" means:

(1) The commission of any act that, on or after November 1, 1989, constituted the criminal offense of:

- (i) Aggravated rape, under Section 39-13-502;
- (ii) Rape, under Section 39-13-503;
- (iii) Aggravated sexual battery, under Section 39-13-504;
- (iv) Sexual exploitation of a minor, under Section 39-17-1003;
- (v) Aggravated sexual exploitation of a minor, under Section 39-17-1004;
- (vi) Especially aggravated sexual exploitation of a minor, under Section 39-17-1005;
- (vii) Rape of a child, under Section 39-13-522;
- (viii) Attempt, under Section 39-12-101, solicitation, under Section 39-12-102, or conspiracy, under Section 39-12-103, to commit any of the offenses enumerated within this subdivision (e)(1); or

(2) The commission of any act that, prior to November 1, 1989, constituted the criminal offense of:

- (i) Aggravated rape, under Section 39-2-603 [repealed];
- (ii) Rape, under Section 39-2-604 [repealed];
- (iii) Aggravated sexual battery, under Section 39-2-606 [repealed];
- (iv) Assault with intent to commit rape or attempt to commit rape or sexual battery under Section 39-2-608 [repealed];
- (v) Use of minor for obscene purposes, under Section 39-6-1137 [repealed];
- (vi) Promotion of performance including sexual conduct by minor, under Section 39-6-1138 [repealed];

(vii) Criminal sexual conduct in the first degree, under Section 39-3703 [repealed];

(viii) Criminal sexual conduct in the second degree, under Section 39-3704 [repealed];

(ix) Criminal sexual conduct in the third degree, under Section 39-3705 [repealed]; or

(x) Solicitation, under Section 39-1-401 [repealed] or Section 39-118(b) [repealed], attempt, under Section 39-1-501 [repealed], Section 39-605 [repealed], or Section 39-606 [repealed], or conspiracy, under Section 39-1-601 [repealed] or Section 39-1104 [repealed], to commit any of the offenses enumerated within subdivision (e)(2);

(3) Any conviction for a felony offense in effect at any time prior to the effective date of this act, that is comparable to a sexually violent offense as defined in subparagraphs (1) through (2) or any federal or other state conviction for a felony offense that under the laws of this state would be a sexually violent offense as defined in this section.

(f) "Agency with jurisdiction" means that agency which releases upon lawful order or authority a person serving a sentence or term of confinement and includes the department of correction, the department of mental health and mental retardation, and the Tennessee board of paroles.

33-6-403.

(a) When it appears that the release of a person convicted of a sexually violent offense listed in Tennessee Code Annotated, Section 33-6-402(e), is imminent, the agency with jurisdiction over the release of the person shall give

written notice of such to the attorney general and the psychiatric evaluation team established in subsection (d), ninety (90) days prior to:

(1) The anticipated release from total confinement of a person who has been convicted of a sexually violent offense, except that in the case of persons who are returned to prison for no more than ninety (90) days as a result of revocation of post-release supervision, written notice shall be given as soon as practicable following the person's re-admission to prison;

(2) Release of a person who has been charged with a sexually violent offense and who has been determined to be incompetent to stand trial pursuant to Tennessee Code Annotated, Section 33-7-301;

(3) Release of a person who has been found not guilty by reason of insanity of a sexually violent offense pursuant to Tennessee Code Annotated, Section 33-7-303.

(b) The agency with jurisdiction shall inform the attorney general and the psychiatric evaluation team established in subsection (d) of the following:

(1) The person's name, identifying factors, anticipated future residence and offense history; and

(2) Documentation of institutional adjustment and any treatment received.

(c) The agency with jurisdiction, its employees, officials, members of the psychiatric evaluation team established in subsection (d), and individuals contracting, appointed or volunteering to perform service hereunder shall be immune from liability for any good-faith conduct under this section.

(d) The commissioner of mental health and mental retardation shall establish a psychiatric evaluation team consisting of certified and qualified

psychiatrists to review available records of each person referred to such team pursuant to subsection (a). The team, within thirty (30) days of receiving notice, shall assess whether or not the person meets the definition of a sexually violent predator, as established in Tennessee Code Annotated, Section 33-6-402. The team shall forward a written assessment to the attorney general.

(e) Upon a finding by the psychiatric evaluation team that a person referred to such team pursuant to subsection (a) may be a sexually violent predator, and after receipt of such written assessment, the attorney general may bring an action against the person pursuant to Section 33-6-404.

33-6-404. When it appears that the person presently confined may be a sexually violent predator and the assessment of the psychiatric evaluation team finds so, the attorney general may file a petition in the appropriate court, within thirty (30) days of the date the attorney general received the written assessment by the psychiatric evaluation team as provided in subsection (a) of Tennessee Code Annotated, Section 33-6-403, alleging that the person is a sexually violent predator and stating sufficient facts to support such allegation.

33-6-405.

(a) Upon filing of a petition under Section 33-6-404, the judge shall determine whether probable cause exists to believe that the person named in the petition is a sexually violent predator. If such determination is made, the judge shall direct that a hearing to determine whether or not such person is a sexually violent predator be held prior to the release of such person.

(b) Prior to release, such person shall be provided with notice of, and an opportunity to appear in person at, a hearing to contest probable cause as to whether the person is a sexually violent predator. At this hearing the court shall:

(1) Verify the person's identity; and

(2) Determine whether probable cause exists to believe that the person is a sexually violent predator. The state may rely upon the petition and supplement the petition with additional documentary evidence or live testimony.

(c) At the probable cause hearing as provided in subsection (b), the person shall have the following rights in addition to the rights previously

specified: (1) To be represented by counsel;

(2) to present evidence on such person's behalf;

(3) to cross-examine witnesses who testify against such person;

and

(4) to view and copy all petitions and reports in the court file.

(d) If the probable cause determination is made, the court shall direct that the person be evaluated to determine whether the person is a sexually violent predator. The evaluation shall be conducted by a person deemed to be professionally qualified to conduct such an examination.

33-6-406. Within sixty (60) days after the completion of any hearing held pursuant to Section 33-6-405, the court shall conduct a trial to determine whether the person is a sexually violent predator. The trial may be continued upon the request of either party and a showing of good cause, or by the court on its own motion in the due administration of justice, and when the respondent will not be substantially prejudiced. At all stages of the proceedings under this act, any person subject to this act shall be entitled to the assistance of counsel, and if the person is indigent, the court shall appoint counsel to assist such person. Whenever any person is subjected to an examination under this act, such person may retain experts or professional persons to perform an examination on such person's behalf. When the person wishes to be examined by a qualified expert or professional person of such person's own choice, such examiner shall

be permitted to have reasonable access to the person for the purpose of such examination, as well as to all relevant medical and psychological records and reports. If a person is indigent, the court, upon the person's request, shall determine whether the services are necessary and reasonable compensation for such services. If the court determines that the services are necessary, and the expert or professional person's requested compensation for such services is reasonable, the court shall assist the person in obtaining an expert or professional person to perform an examination or participate in the trial on the person's behalf. The court shall approve payment for such services upon the filing of a certified claim for compensation supported by a written statement specifying the time expended, services rendered, expenses incurred on behalf of the person and compensation received in the same case or for the same services from any other source. The person, the attorney general, or the judge may demand a jury trial. Such demand for the jury trial shall be filed, in writing, at least four (4) days prior to trial. The number and selection of jurors shall be determined as provided by law and procedural rules. If no demand is made, the trial shall be before the court.

33-6-407.

(a) The court or jury shall determine beyond a reasonable doubt, whether the person is a sexually violent predator. If such determination that the person is a sexually violent predator is made by a jury, such determination shall be by unanimous verdict of such jury. Such determination may be appealed. If the court or jury determines that the person is a sexually violent predator, the person shall be committed to the custody of the department of mental health and mental retardation for control, care and treatment until such time as the person's mental abnormality or personality disorder has so changed that the person is safe to be at large. Such control, care and treatment shall be provided at a facility operated by the department of mental health and mental retardation. At all times, persons



committed for control, care and treatment by the department of mental health and mental retardation division of social and rehabilitation services pursuant to this act shall be kept in a secure facility and such persons shall be segregated at all times from any other patient under the supervision of the commissioner of the department of mental health and mental retardation division of social and rehabilitation services and commencing \_\_\_\_\_, 19\_\_\_\_, such persons committed pursuant to this act shall be kept in a facility or building separate from any other patient under the supervision of department of mental health and mental retardation. The department of mental health and mental retardation may enter into an interagency agreement with the department of correction for the confinement of such persons. Such persons who are in the confinement of the commissioner of correction pursuant to an interagency agreement shall be housed and managed separately from offenders in the custody of the commissioner of correction, and except for occasional instances of supervised incidental contact, shall be segregated from such offenders. If the court or jury is not satisfied beyond a reasonable doubt that the person is a sexually violent predator, the court shall direct the person's release. Upon mistrial, the court shall direct that the person be held at an appropriate secure facility, including, but not limited to, a county jail, until another trial is conducted. Any subsequent trial following a mistrial shall be held within ninety (90) days of the previous trial, unless such subsequent trial is continued as provided in Section 33-6-406 and amendments thereto.

(b) If the person charged with a sexually violent offense has been found incompetent to stand trial, and is about to be released pursuant to Tennessee Code Annotated, Section 33-7-102, and such person's commitment is sought pursuant to subsection (a), the court shall first hear evidence and determine

whether the person did commit the act or acts charged. The hearing on this issue shall comply with all the procedures specified in this section. In addition, the rules of evidence applicable in criminal cases shall apply, and all constitutional rights available to defendants at criminal trials, other than the right not to be tried while incompetent, shall apply. After hearing evidence on this issue, the court shall make specific findings on whether the person did commit the act or acts charged, the extent to which the person's incompetence or developmental disability affected the outcome of the hearing, including its effect on the person's ability to consult with and assist counsel and to testify on such person's own behalf, the extent to which the evidence could be reconstructed without the assistance of the person and the strength of the prosecution's case. If, after the conclusion of the hearing on this issue, the court finds, beyond a reasonable doubt, that the person did commit the act or acts charged, the court shall enter a final order, appealable by the person, on that issue, and may proceed to consider whether the person should be committed pursuant to this section.

33-6-408. Each person committed under this act shall have a current examination of the person's mental condition made once every year. The person may retain, or if the person is indigent and so requests the court may appoint a qualified professional person to examine such person, and such expert or professional person shall have access to all records concerning the person. The annual report shall be provided to the court that committed the person under this act. The court shall conduct an annual review of the status of the committed person. Nothing contained in this act shall prohibit the person from otherwise petitioning the court for discharge at this hearing. The department of mental health and mental retardation shall provide the committed person with an annual written notice of the person's right to petition the court

for release over the commissioner's objection. The notice shall contain a waiver of rights. The department shall forward the notice and waiver form to the court with the annual report. The committed person shall have a right to have an attorney represent the person at the hearing but the person is not entitled to be present at the hearing.

If the court at the hearing determines that probable cause exists to believe that the person's mental abnormality or personality disorder has so changed that the person is safe to be at large and will not engage in acts of sexual violence if discharged, then the court shall set a hearing on the issue. At the hearing, the committed person shall be entitled to be present and entitled to the benefit of all constitutional protections that were afforded the person at the initial commitment proceeding. The attorney general shall represent the state and shall have a right to a jury trial and to have the committed person evaluated by experts chosen by the state. The committed person shall also have the right to have experts evaluate the person on the person's behalf and the court shall appoint an expert if the person is indigent and requests an appointment. The burden of proof at the hearing shall be upon the state to prove beyond a reasonable doubt that the committed person's mental abnormality or personality disorder remains such that the person is not safe to be at large and if released is likely to engage in acts of sexual violence.

33-6-409. The involuntary detention or commitment of persons under this part shall conform to constitutional requirements for care and treatment.

33-6-410. If the commissioner of department of mental health and mental retardation determines that the person's mental abnormality or personality disorder has so changed that the person is not likely to commit predatory acts of sexual violence if released, the commissioner shall authorize the person to petition the court for release. The petitions shall be served upon the court and the attorney general. The court, upon receipt of the petition for release, shall order a hearing within thirty (30) days. The

attorney general shall represent the state, and shall have the right to have the petitioner examined by an expert or professional person of such attorney's choice. The hearing shall be before a jury if demanded by either the petitioner or the attorney general. The burden of proof shall be upon the attorney general to show beyond a reasonable doubt that the petitioner's mental abnormality or personality disorder remains such that the petitioner is not safe to be at large and that if discharged is likely to commit predatory acts of sexual violence.

33-6-411. Nothing in this act shall prohibit a person from filing a petition for discharge pursuant to this act. Provided, however, if a person has previously filed a petition for discharge without the commissioner of mental health and mental retardation approval and the court determined either upon review of the petition or following a hearing, that the petitioner's petition was frivolous or that the petitioner's condition had not so changed that the person was safe to be at large, then the court shall deny the subsequent petition unless the petition contains facts upon which a court could find the condition of the petitioner had so changed that a hearing was warranted. Upon receipt of a first or subsequent petition from a committed person without the commissioner's approval, the court shall endeavor whenever possible to review the petition and determine if the petition is based upon frivolous grounds and if so shall deny the petition without a hearing.

33-6-412. The department of mental health and mental retardation shall be responsible for all cost relating to the evaluation and treatment of persons committed to the department's custody under any provision of this act.

33-6-413. In addition to any other information required to be released under this act, prior to the release of a person committed under this act, the department of mental health and mental retardation shall give written notice of such release to any victim of the person's activities or crime who is alive and whose address is known to the

department or, if the victim is deceased, to the victim's family, if the family's address is known to the department. Failure to notify shall not be a reason for postponement of release. Nothing in this section shall create a cause of action against the state or an employee of the state acting within the scope of the employee's employment as a result of the failure to notify pursuant to this action.

33-6-414. In order to protect the public, relevant information and records which are otherwise confidential or privileged shall be released to the agency with jurisdiction or the attorney general for the purpose of meeting the notice requirement provided in Section 33-6-403 and determining whether a person is or continues to be a sexually violent predator.

33-6-415. Any psychological reports, drug and alcohol reports, treatment records, reports of the diagnostic center, medical records or victim impact statements which have been submitted to the court or admitted into evidence under this act shall be part of the record but shall be sealed and opened only on order of the court or as provided in this part and amendments thereto.

33-6-416. If any provision of this act or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provisions or application and, to this end, the provisions of this act are severable.

SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring

it.